IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 409 OF 2005

IN

WRIT PETITION NO. 1606 OF 2003

RACHEL GUNTHER MATHAIS ... PETITIONER

VS.

MAHADEV R. MISHRA & Ors. ... RESPONDENTS

Mr. A.S.Kamat i/b. Godfrey D'Silva for the petitioner/applicant.

Mr. I.A.Sayyed for Respondents.

CORAM: S.K.SHAH,J.

DATE : 13th October,2005.

P.C.

1. Heard.

2. This Notice of Motion is taken out for setting aside the order of dismissal for default and for restoration of the Writ Petition.

3. I have perused the affidavit in support of the Notice of Motion. The learned Counsel for the

Respondents strongly objects to the restoration. The reason assigned is that the Advocate's Court Clerk failed to inform the Advocate about the listing of matter on 13.7.2005 and due to absence of the Advocate, the matter could not be prosecuted and came to be dismissed for default. For the lapse of Advocate's clerk the petitioner should not suffer. Therefore, I am inclined to set aside the order of dismissal and restore the Writ Petition to file. However, this has to be subject to the payment of costs.

4. The Notice of Motion is allowed with costs of Rs.3,000/- (Rupees three thousand only) to be paid within two weeks from today.

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(S.K.SHAH,J.)